HOOPER AND DORSEY RIDICULE ARGUMENT OF REUBEN ARNOLD

Attorney for Defense Wanted

Remarks Taken Down in

Shorthand to Show Chil-

Dren, Says Frank Hooper.

“NEW TRIAL FOR FRANK

SLAP IN FACE OF JURY”

Solicitor General Says Grant-

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ing Ruling Asked by De-
fense Would Shatter Laws
of the State.

Telling Judge Roan at the Frank hearing yesterday afternoon that if a new trial was granted the convicted man, the presiding justice would establish a precedent that would shake the laws of the state and eventually shutter the jury system of Georgia, Solicitor Hugh M. Dorsey began his argument at 3 o'clock.

"Talk about trembling for fear of the law," he said, "talk about farces—why, if you establish the kind of precedent which the defense ask you to establish, then it will be high time to tremble. It would shake the laws of our land, and shatter justice to remnants."

"Are you going to tear down this verdict which you, yourself, approved when you sentenced this man to death, saying: 'I believe you have received a fair and just trial—so far as I have seek and known, you have?' You can not afford to do it. It would be a slap in the face of justice and the jury system of our state."

Resume Hearing Today.

The solicitor had not progressed very far in his address, when the hearing was adjourned at 4:45 o'clock until 9 o'clock this morning, when it will be resumed in the state library at the

capitol. Mr. Dorsey was preceded by Frank A. Hooper, associate counsel for the prosecution, who assisted the solicitor in the Frank trial.

Mr. Hooper's speech was short but terse. He rebuked Attorney Arnold for the length of his address, and declared that he had not adhered to facts and principles in the case as he should have been required to do. Mr. Arnold was no tin the room at the time, having left immediately his speech as finished.

"Mr. Arnold cited but little law in his speech," said Solicitor Dorsey as he opened his argument. "He devoted almost his entire time to facts. I am, indeed, disappointed. I do not know whether or not Mr. Rosser will dwell upon the law, as he should, or whether he will speak of fact. Either that, or rehash his case. It's pretty hard to say, to tell the truth."

"I'm not going to discuss facts, except in reply to Mr. Arnold's discussions. I'm going to take up only two or three propositions which I consider all your honor can pass upon. They are bias, demonstrations of the crowd, and the law referring to the alleged mistakes in your charge to the jury. Those and Conley's evidence."

Affidavit Uncorroborated.

"First, let us pay attention to these Henslee affidavits—the ones attacking the only juror who considered Frank's guilt the least bit doubtful. They are very indefinite. They have no corroboration, no substantiation. Does your honor intend to tear down this verdict which he himself has approved, because of the weak, pitiable attacks that two or three men—two of whom have been impeached—have made upon this juror?"

"Not a word of blemish has been cast upon the eleven other men who reached the same verdict with Henslee. They could not be attacked. The slightest attack would have been unwarranted, would have been evidence itself of a frame-up."

“It is entirely up to your honor whether or not he is going to take the word of such a man as this C. W. Stough, who is impeached beyond questions, against such a type of man as Henslee, a man sustained by a community, eleven stable jurors and the jury commission of Georgia.”

“This is a desperate situation, your honor. The jury system is in peril. The dignity, the efficiency of the court and the law are at stake. Is it possible that some irresponsible fellows—designing and unscrupulous—can, in

Continued on Page Nine.

PDF PAGE 9, COLUMN 3

HOOPER AND DORSEY RIDICULE ARUGMENT

Continued From Page One.

their obscure and plotting way, come in and tear down what had been legally and fairly built up by our jury system?

Praise for Jurors.

“Now, let me say a thing or two about these jurors whom Arnold and Rosser to not hesitate to attack. They might not be as well known and as brilliant as the brainy Rosser and Arnold, but they are each and everyone of the type which makes society and justice.”

“They are representatives of the respectability that makes the model community. I tell you, it is rare that the court of today managers to obtain a jury anywhere near so ideal and worth as the men who decided upon the guilt of Leo M. Frank.”

“It is ridiculous and farcical the way the mighty Rosser and Arnold shift their fury from one head to another. First, it was the detective department and the solicitor general who were to blame. Now it is the judge and the jury. Lord only knows who will be the unfortunate victim of their next blaze of denunciation.”

Here the solicitor’s argument was discontinued until this morning.

Words of Attorney Hooper created a ripple of laughter in the room when he undertook to explain the length and brilliance of the speech of MR. Arnold, which Hooper followed. He said:

Ridicules Arnold.

“My good friend Arnold has just finished two days of a second jury argument. He had it taken down by a stenographer. For only one reason that I could see—posterity. Evidently he desires that the future young Arnolds can see what Papa Arnold did and said in these brilliant days of his career.”

“We are in a peculiar position. If we happen to argue our case mildly, the defense will accuse us of not having our heart in it. If we go at it enthusiastically we will be charged with the fire and heat of prejudice. We are between the devil and deep blue sea, undecided which way to jump—which punishment to take.”

“After carefully studying over the 115 grounds, however, there are only two which I would feel prompted to dwell upon. When the evidence in the original trial is so strong as to convince

twelve good men and true of guilt, I do not feel that it behooves me—nor any other—to burden the court with a mass of argument. Depend upon me not to do so."

"These two points, to which I have referred, are jury prejudice and the demonstrations of the crowd, upon which Mr. Arnold has laid such eloquent and vitriolic stress. First should come the attack upon Juror Henslee. Probably he is assailed worst by one. Mr. Sam Farcus, of Albany. Now, Farcus is a man of Frank's race and religion."

"Is This Consistent?"

"The defense has an affidavit from Farcus with an order to Henslee for eight buggies, which would represent a good-sized sum of money as well as a valuable business transaction. Farcus says he heard Henslee say he 'was on the jury and would do all he could to hang the damned Jew.' OR words that effect. Now, consider that for a moment."

"Do you really think that if Farcus heard Henslee, the man from whom he bought the eight buggies, say that he would like to thank Frank—or even a damned Jew—he would have made the order. NO, sirree! I should say not. Mr. Henslee would not have sold eight buggies to Mr. Farcus. Mr. Farcus would have bought them from some drummer who either was not so loquacious or had more pleasing view of Frank case."

"However, such statements as are accredited to Henslee, according to law, do not disqualify a juror. That is sent down by our most eminent authorities."

"Now, another thing. At the time these men swear that Henslee made the statement that he was on the jury and would do all within his power to thank Frank, he was not on any such thing, because the jury had not been drawn. That's a fact. It seems that the defense has unfortunately overlooked it, however."

No Evidence of Bias.

“For twenty-nine days not one of the eleven other jurors who slept and ate with Henslee noticed one evidence or prejudice or the rank bias with which he has been accused. The presumption, on the other hand, is always in favor of the juror. However, it is said that the law doesn’t permit us to presume.”

“The supreme court says so, and, in such cases, invariably refers the matter back to the trial judge who must decide.”

“The other question on which I am going to dwell, is that applause and demonstrations of the crowds at the trial. So far as law is concerned, as I understand, applause does not affect a trial unless at the exact moment of a verdict’s rendition. And the, it is not illegal unless condemned officially by the presiding judge.”

“Otherwise, we never would finish trying cases. Why, such a law as the one Messrs. Arnold and Rosser are talking of, would always give a man a chance for either a mistrial or a new trial. Friends of the defendant could design and scheme a means of creating a demonstration in or outside of a courtroom and invariably accomplish their purpose.”

“Suppose, for an instant, that there was such a rule granting a new or mistrial on the grounds of applause that reached the ears of the jury. Couldn’t a man with as many friends as Frank always frame up some kind of an outbreak that would gain the desired end? Yes! Certainly. You know it; I know it. We all know it. Trouble is some folks won’t admit it.”

Would be Unconstitutional.

“Such a rule that can never be laid down. It would be unconstitutional in the first place. In the second, it would strip the trial judge of all opportunity of individual discretion.”

“In behalf of the twelve earnest, sober, and upright men who decided the fate of Frank, and who maintained the dignity of our law and courts, I deny Mr. Arnold’s statement that they sat in the box like a herd of scared rabbits. They were not dogs in leash—there was no fear in their hearts; no blood on their conscience.”

“They were free, liberal Americans, administering justice as they saw fit and as they were required by the laws of our nation. That and nothing more. I defy anyone to prove otherwise.”

“The law is supposed to be the consummation of highest common sense. It takes but a little common sense to show that the jury of the Frank trial was not intimidated in the least during the progress of the case, nor at any other time. Before the verdict is changed, some unquestionable fact must be produced to the contrary.”

With these words, Mr. Hooper’s speech was concluded.

Attorney Arnold’s argument was concluded at 3 o’clock in the afternoon. He said:

“Your honor, Mr. Rosser and I feel sincerely that Frank is innocent. We feel that he has suffered more persecution than any one person in the history of civilization.”

Trial Was Terrible.

“His trial was dreadful; it was horrible. If your honor denies this motion, the case is entirely at close. If your honor grants it, it will be the only fair and just act that can be done.”

“In the name of God, the name of law and peace and justice, a new trial should be granted. I have no doubt that it will.”

During the morning, much of Arnold’s address was devoted to a blistering attack upon the solicitor general. Dorsey was accused even of coercing the jury by fear of mob violence. Conley’s story was also arraigned. Closing at 3 o’clock, his argument occupied fully two days.

The solicitor is expected to use all of today in his speech. He will be followed by Attorney Rosser, who will make the closing argument.

PDF PAGE 7, COLUMN 5

JUDGE HILL INSTRUCTS THE SHERIFF TO DRAW JURY FOR NEXT WEEK

Judge Ben Hill, who takes his seat in the superior court of Fulton county on next Monday, instructed Sheriff Mangum yesterday to draw a jury for that date.

Judge Hill will take up the criminal docket, now carrying some 126 jail cases. It is the intention of Judge Hill to clear the jail as soon as possible and to this end he will hold court sessions twice a day until the county institution is in a reasonably clear condition.

During the past two months the criminal docket has been piling up, due to the long Frank trial and the following work of the solicitor general, and it is believed that at least two weeks will be

consumed before Judge Hill can make much headway into the piled-up work.